

The Honorable Thomas S. Zilly
The Honorable S. Kate Vaughan

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ECHOTA C. WOLFCLAN, on behalf
of himself and other similarly situated
individuals,

Plaintiffs,

v.

PIERCE COUNTY, et al.,

Defendants.

CASE NO. 23-cv-5399-TSZ-SKV

~~MODEL~~ AGREEMENT
REGARDING DISCOVERY OF
ELECTRONICALLY STORED
INFORMATION AND
~~PROPOSED~~ ORDER

The parties hereby stipulate to the following provisions regarding the discovery of electronically stored information (“ESI”) in this matter:

A. General Principles

1. An attorney’s zealous representation of a client is not compromised by conducting discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate in facilitating and reasonably limiting discovery requests and responses raises litigation costs and contributes to the risk of sanctions.

2. As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P. 26(b)(1) must be applied in each case when formulating a discovery plan. To further the

1 application of the proportionality standard in discovery, requests for production of ESI and related
2 responses should be reasonably targeted, clear, and as specific as possible. This agreement is
3 intended to assist the parties in identifying relevant, responsive information that has been stored
4 electronically and is proportional to the needs of the case. The agreement does not supplant the
5 parties' obligations to comply with Fed. R. Civ. P. 34.

6 **B. ESI Disclosures**

7 Within 30 days of entry of this Order, or at a later time if agreed to by the parties, each
8 party shall disclose:

9 1. Custodians. The custodians most likely to have discoverable ESI in their
10 possession, custody, or control. The custodians shall be identified by name, title, connection to
11 the instant litigation, and the type of the information under the custodian's control.

12 2. Non-custodial Data Sources. A list of non-custodial data sources (*e.g.*, shared
13 drives, servers), if any, likely to contain discoverable ESI.

14 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to
15 contain discoverable ESI (*e.g.*, third-party email providers, mobile device providers, cloud
16 storage) and, for each such source, the extent to which a party is (or is not) able to preserve
17 information stored in the third-party data source.

18 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI (by
19 type, date, custodian, electronic system or other criteria sufficient to specifically identify the
20 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

21 **C. ESI Discovery Procedures**

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1 1. On-site inspection of electronic media. Such an inspection shall not be required
2 absent a demonstration by the requesting party of specific need and good cause or by agreement
3 of the parties.

4 2. Search methodology. The parties shall timely confer to attempt to reach agreement
5 on appropriate search terms and queries, file type and date restrictions, data sources (including
6 custodians), and other appropriate computer- or technology-aided methodologies, before any such
7 effort is undertaken. The parties shall continue to cooperate in revising the appropriateness of the
8 search methodology.

9 a. Prior to running searches:

10 i. The producing party shall disclose the data sources (including
11 custodians), search terms and queries, any file type and date restrictions, and any other
12 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable
13 information. The producing party will provide unique hit counts for each search query.

14 ii. The requesting party is entitled to, within 14 days of the producing
15 party's disclosure, add no more than 15 search terms or queries to those disclosed by the
16 producing party absent a showing of good cause or agreement of the parties.

17 iii. The following provisions apply to search terms / queries of the
18 requesting party. Focused terms and queries should be employed; broad terms or queries, such
19 as product and company names, generally should be avoided. A conjunctive combination of
20 multiple words or phrases (*e.g.*, "computer" and "system") narrows the search and shall count as
21 a single search term. A disjunctive combination of multiple words or phrases (*e.g.*, "computer"
22 or "system") broadens the search, and thus each word or phrase shall count as a separate search
23 term unless they are variants of the same word. The producing party may identify each search
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1 term or query returning overbroad results demonstrating the overbroad results and a counter
2 proposal correcting the overbroad search or query.

3 b. After production: Within 21 days of the producing party notifying the
4 receiving party that it has substantially completed the production of documents responsive to a
5 request, the responding party may request no more than 15 additional search terms or queries.
6 The immediately preceding section (Section C(2)(a)(iii)) applies.

7 c. Upon reasonable request, a party shall disclose information relating to
8 network design, the types of databases, database dictionaries, the access control list and security
9 access logs and rights of individuals to access the system and specific files and applications, the
10 ESI document retention policy, organizational chart for information systems personnel, or the
11 backup and systems recovery routines, including, but not limited to, tape rotation and
12 destruction/overwrite policy.

13 3. Format.

14 a. ESI will be produced to the requesting party with searchable text.
15 Acceptable formats include, but are not limited to, native files, multi-page TIFFs (with a
16 companion OCR or extracted text file), single-page TIFFs (only with load files for e-discovery
17 software that includes metadata fields identifying natural document breaks and also includes
18 companion OCR and/or extracted text files), and searchable PDF.

19 b. Unless otherwise agreed to by parties, files that are not easily converted to
20 PDF or image format, such as spreadsheet, database, and drawing files, will be produced in native
21 format.

22 c. Each document image file shall be named with a unique number (Bates
23 Number). File names should not be more than twenty characters long or contain spaces. When a
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1 text-searchable image file is produced, the producing party must preserve the integrity of the
2 underlying ESI, *i.e.*, the original formatting, the metadata (as noted below) and, where applicable,
3 the revision history.

4 d. If a document is more than one page, the unitization of the document and
5 any attachments and/or affixed notes shall be maintained as they existed in the original document.

6 e. The parties shall produce their information in the following format: single-
7 page images and associated multi-page text files containing extracted text or with appropriate
8 software load files containing all information required by the litigation support system used by
9 the receiving party.

10 f. The full text of each electronic document shall be extracted (“Extracted
11 Text”) and produced in a text file. The Extracted Text shall be provided in searchable ASCII text
12 format (or Unicode text format if the text is in a foreign language) and shall be named with a
13 unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding
14 production version of the document followed by its file extension).

15 4. De-duplication. The parties may de-duplicate their ESI production across custodial
16 and non-custodial data sources after disclosure to the requesting party, and the duplicate custodian
17 information removed during the de-duplication process tracked in a duplicate/other custodian
18 field in the database load file.

19 5. Email Threading. The parties may use analytics technology to identify email
20 threads and need only produce the unique most inclusive copy and related family members and
21 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce
22 a less inclusive copy.

6. Metadata fields. If the requesting party seeks metadata, the parties agree that only the following metadata fields need be produced, and only to the extent it is reasonably accessible and non-privileged: document type; custodian and duplicate custodians (or storage location if no custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size; file extension; original file path; date and time created, sent, modified and/or received; and hash value. The list of metadata type is intended to be flexible and may be changed by agreement of the parties, particularly in light of advances and changes in technology, vendor, and business practices.

7. Hard-Copy Documents. If the parties elect to produce hard-copy documents in an electronic format, the hard copy documents will be scanned on a document level and will include a reference file that sets forth the custodian or custodian/location associated with each produced document. Hard-copy documents will be scanned using Optical Character Recognition technology and searchable ASCII text files will be produced (or Unicode text format if the text is in a foreign language), unless the producing party can show that the cost would outweigh the usefulness of scanning (for example, when the condition of the paper is not conducive to scanning and will not result in accurate or reasonably useable/searchable ESI). Each file will be named with a unique Bates Number (*e.g.*, the unique Bates Number of the first page of the corresponding production version of the document followed by its file extension).

D. Preservation of ESI

The parties acknowledge that they have a common law obligation, as expressed in Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable information in the party's possession, custody, or control. With respect to preservation of ESI, the parties agree as follows:

1 1. Absent a showing of good cause by the requesting party, the parties shall not be
2 required to modify the procedures used by them in the ordinary course of business to back-up and
3 archive data; provided, however, that the parties shall preserve all discoverable ESI in their
4 possession, custody, or control.

5 2. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.
6 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure
7 where that data is created after a disclosure or response is made (unless excluded under Sections
8 (D)(3) or (E)(1)-(2)).

9 3. Absent a showing of good cause by the requesting party, the following categories
10 of ESI need not be preserved:

- 11 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 12 b. Random access memory (RAM), temporary files, or other ephemeral data
13 that are difficult to preserve without disabling the operating system.
- 14 c. On-line access data such as temporary internet files, history, cache,
15 cookies, and the like.
- 16 d. Data in metadata fields that are frequently updated automatically, such as
17 last-opened dates (see also Section (E)(5)).
- 18 e. Back-up data that are duplicative of data that are more accessible
19 elsewhere.
- 20 f. Server, system or network logs.
- 21 g. Data remaining from systems no longer in use that is unintelligible on the
22 systems in use.
- 23 h. Electronic data (*e.g.*, email, calendars, contact data, and notes) sent to or
24 from mobile devices (*e.g.*, iPhone, iPad, Android devices), provided that
25 a copy of all such electronic data is automatically saved in real time
26 elsewhere (such as on a server, laptop, desktop computer, or “cloud”
 storage).

E. Privilege

1 1. A producing party shall create a privilege log of all documents fully withheld from
2 production on the basis of a privilege or protection, unless otherwise agreed or excepted by this
3 Agreement and Order. Privilege logs shall include a unique identification number for each
4 document and the basis for the claim (attorney-client privileged or work-product protection). For
5 ESI, the privilege log may be generated using available metadata, including author/recipient or
6 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata
7 provide insufficient information for the purpose of evaluating the privilege claim asserted, the
8 producing party shall include such additional information as required by the Federal Rules of
9 Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after
10 delivering a production.

11 2. Redactions need not be logged so long as the basis for the redaction is clear on the
12 redacted document.

13 3. With respect to privileged or work-product information generated after the filing
14 of the complaint, parties are not required to include any such information in privilege logs.

15 4. Activities undertaken in compliance with the duty to preserve information are
16 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

17 5. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this
18 proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding,
19 constitute a waiver by the producing party of any privilege applicable to those documents,
20 including the attorney-client privilege, attorney work-product protection, or any other privilege
21 or protection recognized by law. Information produced in discovery that is protected as privileged
22 or work product shall be immediately returned to the producing party, and its production shall not
23 constitute a waiver of such protection.

DATED: June 10, 2024.

By: /s/ Scott Pritchard

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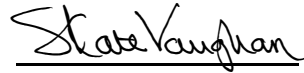
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ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED this 13th day of June, 2024.



S. KATE VAUGHAN
United States Magistrate Judge